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November 21, 2011

The Honorable Julius Genachowski  
Chairman, Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: WT Docket No. 11-65  
Applications of AT&T Inc. and Deutsche Telekom AG for Consent to  
Assign or Transfer Control of Licenses and Authorizations

Dear Chairman Genachowski:

As Attorney General of Kansas, I write to express my concern regarding the proposed merger of AT&T, Inc. and T-Mobile USA. Detailed information regarding potential harm to the public has been submitted by many filers, so I will simply highlight several areas of concern that already are in the record rather than duplicate information previously presented to the Commission.

The Commission is charged with determining whether the requested transfer and assignment of licenses and authorizations from T-Mobile to AT&T serve the public interest, convenience, and necessity.<sup>1</sup> The proposed acquisition would reduce the number of national cell phone carriers from four to three. AT&T is one of the two largest companies in the wireless market<sup>2</sup>. T-Mobile, the proposed acquisition, has a reputation as the innovative, low-cost maverick of the national mobile service industry<sup>3</sup> with the highest customer service rating among the national carriers.<sup>4</sup> The loss of T-Mobile through its consolidation with one of the two industry giants will deal a blow to competition and, ultimately, to consumers' choice, satisfaction, and cost, with no substantial benefit to offset this loss.

It is noteworthy that the majority of support for the proposed merger has been based on a promise to expand high-speed data coverage beyond AT&T's current plans. AT&T has

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<sup>1</sup> 47 U.S.C. § 310(d).

<sup>2</sup> See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Fifteenth Report*, 26 FCC Rcd 9664, 9697, Table 3, 9698, Table 4 (2011) (*Fifteenth Report*).

<sup>3</sup> *How Will the Proposed Merger Between AT&T and T-Mobile Affect Wireless Telecommunications Competition?*: Hearing Before the Subcomm. on Intellectual Prop., Competition, and the Internet of the House Comm. on the Judiciary, 112th Cong. 129-30 (written statement of Professor Andrew I. Gavil).

<sup>4</sup> J.D. Power & Associates, 2011 Wireless Customer Care Performance Study, at [http://www.jdpower.com/Telecom/ratings/wireless-customer-care-ratings-\(volume-1\)/](http://www.jdpower.com/Telecom/ratings/wireless-customer-care-ratings-(volume-1)/)

promised rollout of high-speed, wireless 4G LTE coverage to 97 percent of the nation's population, and thus 55 million more Americans than its current plan of 80 percent coverage, in exchange for these harms to consumers and the economy. AT&T said it needs T-Mobile assets and spectrum to complete this rollout; however, AT&T has acknowledged it has the ability to provide this coverage with or without T-Mobile's assets.<sup>5</sup> AT&T already provides standard wireless coverage to 97 percent of the population<sup>6</sup>, and the addition of T-Mobile's smaller, more urban-concentrated network holdings<sup>7</sup> will not significantly bolster its rural infrastructure. In addition to its lack of rural infrastructure, T-Mobile holds virtually no low band spectrum,<sup>8</sup> which the Commission has recognized is key in rural areas.<sup>9</sup>

I am a strong supporter of expanded 4G LTE coverage, which is vital to rural Kansas. However, the record does not show the connection between allowing this merger to proceed and causing expanded 4G LTE coverage in rural Kansas. With or without this proposed merger, AT&T will have to continue LTE rollout beyond 80 percent to remain competitive. Verizon, AT&T's key competitor, has already launched LTE in 38 cities and plans to expand LTE coverage to its entire EV-DO footprint, which includes 289 million people, by 2013.<sup>10</sup> Competition in the market will require AT&T to respond with similar coverage to avoid losing customers.

The proposed merger actually threatens that market competition. It will increase market concentration, leaving 80 percent of the market in the hands of two companies, AT&T and Verizon.<sup>11</sup> Concentrated markets lack competitive balance; they give powerful players the ability to restrain competition and consumer choice. AT&T and Verizon, which have the most expensive national cell phone rate plans in the market,<sup>12</sup> will have a reduced incentive to compete with each other on price without competitors like T-Mobile.

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<sup>5</sup> Letter from Richard L. Rosen, Counsel for AT&T Inc., to Marlene H. Dortch, Esq., Federal Communications Commission, of 8/8/2011, Re: Notice of Ex Parte Presentation.

<sup>6</sup> AT&T, Cities Supporting AT&T 3g Voice and Mobile Broadband, at [http://www.wireless.att.com/coverageviewer/popUp\\_3g.jsp](http://www.wireless.att.com/coverageviewer/popUp_3g.jsp) (AT&T's EDGE network extends over 97% of the U.S. population.)

<sup>7</sup> Gordon Mack, 4G Success Strategy: Match Your Smartphone Users With Your Rollout, at <http://www.4gtrends.com/articles/31785/4g-success-strategy-match-your-smartphone-users-wi> ("Verizon and AT&T, the two dominant U.S. carriers, have large customer bases in both urban and rural areas. Sprint/Clearwire and T-Mobile have a more urban focus").

<sup>8</sup> *Fifteenth report*, 26 FCC Rcd at 9831, Table 27, ¶ 287 (A T-Mobile subsidiary one Cellular license in the 850 MHz band in South Carolina), 9837, ¶ 299.

<sup>9</sup> *Fifteenth Report*, 26 FCC Rcd at 9682, 9833, ¶ 292, 9885, ¶ 388 ("Spectrum below 1 GHz can be crucial for the deployment of mobile wireless service in rural areas because its propagation characteristics allow providers to cover a relatively large geographic area with a relatively small number of cell sites.").

<sup>10</sup> *Fifteenth report*, 26 FCC Rcd at 9736, Table 11, 9830. Verizon, Deploying LTE, <http://aboutus.verizonwireless.com/rural/Deploying.html>.

<sup>11</sup> Steven M. Davidoff, AT&T's Battle for T-Mobile Is Political as Well as Legal, N.Y. Times, September 6, 2011, at <http://dealbook.nytimes.com/2011/09/06/atts-battle-for-t-mobile-is-political-as-well-as-legal>. AT&T and Verizon already reportedly accounted for more than 80 percent of the wireless industry EBITDA during the third quarter of 2010. *Fifteenth report*, 26 FCC Rcd at 9796, ¶ 214.

<sup>12</sup> Philip Elmer-DeWitt, Rate Plans: How AT&T, Verizon, Spring and T-Mboile stack up, CNN Money, February 4, 2011, at <http://tech.fortune.cnn.com/2011/02/04/rate-plans-how-att-verizon-sprint-and-t-mobile-stack-up>.



AT&T chose to rein in plans to expand its rural coverage<sup>13</sup> and instead outbid other companies interested in acquiring T-Mobile by a reported \$10 billion, rather than investing in coverage rollout. Deutsche Telekom CFO Timotheus Hoettges confirmed that the company was in talks with five other companies prior to reaching agreement with AT&T,<sup>14</sup> which offered the highest selling price.<sup>15</sup> In its bid to acquire T-Mobile, it appears that AT&T has chosen to pay a premium to take an innovative competitor out of the market.

The mobile wireless services market is already highly concentrated.<sup>16</sup> More concentration in this area will only harm competition, reduce choice, raise prices, and thus harm the consumers we are charged with protecting. I urge the Commission to promptly conclude its review of AT&T's application for approval of its acquisition of T-Mobile and, if it finds the above information in the record to be true and accurate, take necessary action to deny the proposed merger.

Thank you for your attention to this matter.

Respectfully submitted,



Derek Schmidt  
Kansas Attorney General

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<sup>13</sup> Rosen letter, 8/8/2011.

<sup>14</sup> Cornelius Rahn, Deutsche Telecom, AT&T United Front Masks Diverging Interests on T-Mobile, Bloomberg, September 9, 2011, at <http://www.bloomberg.com/news/2011-09-08/deutsche-telekom-at-t-seen-at-odds-with-t-mobile-deal-crumbling.html>.

<sup>15</sup> *Id.* (Heinrich Ey, a fund manager at Allianz Global Investors, indicated an IPO of T-Mobile may only yield 20 billion euros (\$28 billion)).

<sup>16</sup> *Fifteenth report*, 26 FCC Rcd at 9709, ¶¶ 51-52, 9711, Chart 1.